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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/846,459	05/02/2001	Yuji Kawaguchi	0445-0300P	4434

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EXAMINER

PICKETT, JOHN G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 01/13/2004

16

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/846,459

Applicant(s)

KAWAGUCHI ET AL.

Examiner

Gregory Pickett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-9 is/are pending in the application.
- 4a) Of the above claim(s) 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-6, 8 and 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 7 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This Office Action acknowledges the applicant's Amendment C, presented as Paper No. 15. Claims 1 and 3-9 are pending in the application. Claim 7 is withdrawn from consideration as being directed to a nonelected invention.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 103***

3. Claims 1, 3, 5, 6, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stone (US 5,314,114) in view of Stone (US 3,963,173) and Giblin et al (US 5,320,279).

Regarding claim 1, Stone '114 discloses a paper container (10) having a hexahedral configuration (see Figure 4) and comprising a container main body (26); a lid member (28) attached to a back side edge part (29) of an upper end open surface of the container main body and having an upper surface lid part (12), a front surface lid part (57), and a pair of side lid parts (as shown, Figure 4); an inner carton part (40, 42, 44) with concave cutout part (50) formed on a front board (42); and severance guide line (24) extending obliquely downward along a pair of side boards and extending along the front board under the cutout part. The container of Stone '114 is sized as claimed by the applicant and is capable of storing an agglomerated detergent (see for example, Col. 1, line 29).

Stone '114 does not disclose the severance guide line extending from opposite ends of the connecting ridge line or a concave cutout part completely removed from the front board of the inner carton part.

Stone '173 discloses a container (Figure 19) with an inner carton part (184) having a concave cutout part (186) completely removed from front board (184) and severance guide line (222, 206) extending from opposite ends of the connecting ridge line (as shown, Figure 19). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Stone '114 with a lid and cutout structure as taught by Stone '173 in order to provide ready access to the contents (see for example, Stone '173, Col. 1, ll. 41-45).

Stone '114-Stone '173 does not disclose an inner carton part being mounted on an inner side of the container, which the examiner interprets as meaning separate from the container.

Giblin et al discloses a container with an inner carton part that may be separate from the container (Col. 2, ll. 18-20). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the container of Stone '114 with an inner carton part that is separate as taught by Giblin et al in order to allow for the printing of separate material on the inner carton part. It has been held that constructing a formerly integral structure in various elements involves only routine skill in the art.

Nerwin v. Erlichman, 168 USPQ 177, 179.

As to claim 3, the container of Stone '114-Stone '173-Giblin discloses lock parts (Stone '173, 188, 190).

As to claim 5, the container of Stone '114-Stone '173-Giblin is capable of storing a packaged detergent; such a limitation constitutes an intended use.

As to claim 6, the container of Stone '114-Stone '173-Giblin discloses a container formed of a moisture proof material (Giblin, Col. 2, ll. 25-27). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include this feature in the container of Stone '114-Stone '173-Giblin to protect the packaged detergent during storage. The container of Stone '114-Stone '173-Giblin is capable of storing a sheet-like detergent; such a limitation constitutes an intended use.

As to claim 8, the container of Stone '114-Stone '173-Giblin discloses a unitary front board (Stone '173, 184).

As to claim 9, the container of Stone '114-Stone '173-Giblin discloses a separate inner carton part (see for example, Giblin et al, Col. 2, ll. 18-20).

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stone '114-Stone '173-Giblin as applied to claim 1 above, and further in view of Wood et al (US 5,985,772).

The container of Stone '114-Stone '173-Giblin, as applied to claim 1 above, meets all limitations claimed by the applicant except for the paper material formed of a paper baser material, a printed layer, an outer colored film, and an inner film.

Wood et al discloses a packaging material comprising a paper base material (240), a printed layer (220), an outer colored film (210), and an inner film (210). The outer film (210) and inner film (210) of Wood et al consists of an aqueous borne acrylic

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coating having a natural color. The coatings can also be pigmented (Col. 8, ll. 16-18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to fabricate the container of Stone '114-Stone '173-Giblin with a packaging material as taught by Wood et al in order to protect the paper base material and printed matter from damage.

### ***Response to Arguments***

5. Applicant's arguments, see pages 6-8, filed October 30, 2003, with respect to the combination of Stone '114 and Giblin et al alone, have been fully considered and are persuasive. The rejection of claims 1, 5, 6, and 8 under 35 UCS 103(a) over Stone '114-Giblin has been withdrawn.

6. Applicant's arguments filed October 30, 2003 with respect to the combination of Stone '114, Stone '173, and Giblin et al have been fully considered but they are not persuasive. Applicant argues that the cutout of Stone '173 is a "finger access recess" and not large enough to allow for the removal of the contents. The examiner notes that the specific contents are not positively recited. Depending on the size of the contents, the cutout of Stone '173 is capable of allowing for the removal of the contents (such as tablets or an agglomerated detergent) from the front side. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it

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meets the claim. See In re Casey, 152 USPQ 235 (CCPA 1967) and In re Otto, 136 USPQ 458, 459 (CCPA 1963).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 703-305-8321. The examiner can normally be reached on Mon-Fri, 9:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

*GP*  
Gregory Pickett  
Examiner  
January 2, 2004



Mickey Yu  
Supervisory Patent Examiner  
Group 3700